

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Assessment and Collection of Regulatory
Fees for Fiscal Year 2008

MD Docket No. 08-65
RM No. 11312

JOINT REPLY COMMENTS

Brasil Telecom of America, Inc., Hibernia Atlantic U.S. LLC, Columbus Networks USA, Inc., ARCOS-1 USA, Inc., and A. SUR Net, Inc. (collectively, "Joint Commenters"), through undersigned counsel, hereby jointly reply to the Comments of AT&T Inc. filed in the above-captioned rulemaking proceeding ("NPRM"). AT&T was the only party filing comments in response to the recent NPRM that did not call for an immediate change to the methodology by which the FCC calculates regulatory fees for licensees of submarine cables. AT&T instead raises many of the same arguments it previously made against VSNL Telecommunications (US) Inc.'s proposal in 2006 to change the present fee system.¹

In response, Joint Commenters note that during the comment phase of this NPRM they separately signed a Joint Proposal that sets forth a number of general principles regarding

¹ See Petition for Rulemaking, VSNL Telecommunications (USA) Inc., RM-11312 (filed Feb. 6, 2006).

modification to the IBC fee category. Joint Commenters believe this Joint Proposal addresses many of the concerns raised by AT&T, and urge the Commission to take action to immediately reform the IBC fee regime. However, while Joint Commenters support the general principles in the Joint Proposal, they address here one area of concern that owners of smaller capacity cables may have a disproportionately higher fee burden than those of larger systems.

The Joint Proposal calls for a new regulatory fee for submarine cable systems (“SCS Fee”), and recommends that the SCS Fee be the same for all submarine cable systems. Joint Commenters are concerned, however, that a single fee structure may put a disproportionately larger regulatory burden on the smaller companies and systems with less revenues than the major players in the industry.

Joint Commenters operate submarine cables with significant lower active capacity and revenues than those operated by AT&T and other larger operators. By having a single fee structure applicable to each cable system, some operators would benefit by being able to spread around the regulatory fees over many more customers and capacity. Joint Commenters and other similarly situated smaller operators, would be unfairly prejudiced by having less ability to recover their regulatory costs, thus, making their operations more costly than those of the larger operators.

Moreover, having a single regulatory fee per submarine system would discourage investment in the deployment of new submarine cable systems in routes where there is less demand for capacity-intensive applications, such as the Caribbean or South America; thereby stifling innovation and the ability of Americans to communicate directly with many regions of the world.

Therefore, to address these concerns Joint Commenters recommend that the FCC adopt a two-tiered approach to assessing the new SCS Fee. Joint Commenters propose that the new SCS Fee have a component (a low proportion) payable on a system-by-system basis, with the other component (corresponding to a higher proportion of the fee) covered by those cable owners reaching a certain threshold active capacity target. Joint Commenters are currently evaluating internally how to allocate these proportions and thresholds and would supplement the record shortly with their proposal.

By setting up a new two-tiered SCS Fee, the Commission would give regulatory certainty to the industry, would promote investment in new submarine networks on all routes and would level the playing field for all submarine cable operators. On the other hand, failure to amend the IBC fee regime would only continue to disrupt the submarine cable industry and discourage additional investment in this important sector.

Accordingly, Joint Commenters respectfully request that the Commission adopt the Joint Proposal with the caveat that the Commission implement a two-tiered system for assessing the new SCS Fee.

Respectfully submitted,

**On behalf of
Brasil Telecom of America, Inc.
Columbus Networks USA, Inc.,
ARCOS-1 USA, Inc., and A. SUR Net, Inc.
Hibernia Atlantic US LLC**

/s/ Troy F. Tanner

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